

No. 22-56090

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**JUNIOR SPORTS MAGAZINES, INC., ET
AL.,**

Plaintiffs-Appellants,

v.

ROB BONTA, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California

No. 2:22-cv-04663-CAS-JCx
Hon. Christina A. Snyder, Judge

**DEFENDANTS-APPELLEES' MOTION FOR EXTENSION OF
TIME TO FILE PETITION FOR PANEL REHEARING
OR REHEARING EN BANC**

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**MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR PANEL REHEARING OR REHEARING EN BANC**

Pursuant to Ninth Circuit Rule 31-2.2, Defendants-Appellees respectfully submit this motion for an extension of time of 45 days in which to file a petition for panel rehearing or rehearing en banc in this appeal, up to and including November 13, 2023.¹ The requested extension will allow Defendants-Appellees sufficient time to consider whether to file a petition for panel rehearing or rehearing en banc in this significant case. Defendants-Appellees have not previously requested an extension of time to file a petition. As further set forth below and in the attached declaration, there is a substantial need and good cause for the extension. Plaintiffs-Appellants oppose the request for additional time.

On August 7, 2023, a panel of this Court filed a published opinion in this case reversing the district court's decision, which had denied Plaintiffs-Appellants' motion for a preliminary injunction. *Junior Sports Magazines Inc. v. Bonta*, -- F.4th ---, No. 22-56090, 2023 WL 5945879 (9th Cir. Sep. 13, 2023). The case involves a challenge on First Amendment grounds to California Business and Professions Code section 22949.80 ("Section

¹ Given that the 45th day after the current due date to file a petition falls on a Saturday, Defendants-Appellants respectfully request an extension to the following Monday, November 13. *See* Fed. R. App. Proc. 26(a)(1)(C).

22949.80”), which prohibits the advertising and marketing of firearms in a manner that is designed, intended, or reasonably appears to be attractive to minors. The panel concluded that despite Defendants-Appellees’ evidentiary showing and arguments, as well as case law upholding laws restricting commercial speech in the service of important public health and safety concerns, Plaintiffs-Appellants are likely to succeed on the merits of their First Amendment claim. *See Junior Sports Magazines Inc.*, 2023 WL 5945879, at *3-8. It further concluded that the remaining preliminary injunction factors weighed in Plaintiffs-Appellants’ favor, and therefore reversed the district court’s denial of a preliminary injunction and remanded the case for further proceedings consistent with its opinion. *Id.* at *8.

The current deadline to seek panel rehearing or rehearing en banc is September 27, 2023. *See* Fed. R. App. P. 40(a)(1) and 35(c). This Court may extend that due date for good cause, including a showing of diligence and substantial need. *See* 9th Cir. R. 31-2.2(b); *see also* Fed. R. App. P. 26(b), 40(a)(1).

As set forth below and in the accompanying declaration, Defendants-Appellees are carefully analyzing the panel’s decision to determine whether the filing of a petition for panel rehearing or rehearing en banc is warranted. *See* Fed. R. App. P. 35(a)(1), (b)(1)(A). This case involves important

questions of constitutional law, including the construction and application of the intermediate-scrutiny standard to regulation of commercial speech. The decision on whether to file a petition requires careful deliberation and consultation among multiple sections within the California Attorney General's Office, as well as multiple levels of internal approval. Decl. of Kevin J. Kelly at ¶ 3. The requested extension of time accounts for both the internal approval process and for the future work involved in preparing and finalizing a petition for panel rehearing or rehearing en banc, which must also undergo a very detailed review and approval process, if the Attorney General's Office determines to file a petition. *Id.* The requested extension will also ensure that the petition, if filed, will present the issues in a way that will be most helpful to the Court.²

² The instant appeal was heard on the same date and by the same panel as an appeal of denial of a preliminary injunction in *Safari Club International et al. v. Bonta* (9th Cir. Case No. 23-15199), a challenge to Section 22949.80 on similar grounds. As of this filing, an opinion in *Safari Club International* has not yet issued. The requested extension of time could allow Defendants-Appellees to also consider whether any opinion in that matter (if issued during the requested extension) informs the question whether to seek rehearing in this case.

In conclusion, based on the foregoing, Defendants-Appellees respectfully request a forty-five day extension until November 13, 2023 to consider and, if necessary, prepare and file such petition. (*Id.* ¶ 4.)

Dated: September 20, 2023

Respectfully submitted,

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Supervising Deputy Attorney General

/s/ Kevin J. Kelly

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**DECLARATION OF KEVIN J. KELLY IN SUPPORT OF
MOTION FOR EXTENSION OF TIME**

I, Kevin J. Kelly, declare:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am employed as a Deputy Attorney General by the California Department of Justice, Office of the Attorney General. I am an attorney of record for Defendants-Appellees and have personal knowledge of the matters stated herein.

2. This Court published its opinion in this case on September 13, 2023. *Junior Sports Magazines Inc. v. Bonta*, -- F.4th ---, 2023 WL 5945879 (9th Cir. Sep. 13, 2023). Defendants-Appellees and their counsel are considering whether to file a petition for panel rehearing or rehearing en banc at this time.

3. The current deadline to file a petition is September 27, 2023. Defendants-Appellees request a 45-day extension of time to consider and, if necessary, file a petition for rehearing or rehearing en banc. The requested extension accounts for both the review and approval process for the decision to file a petition and the work involved in preparing and finalizing a petition for rehearing en banc, which must undergo a very detailed review and approval process as well. An extension is necessary because assessing whether to seek further review

requires a careful and in-depth process, including by multiple components of the Office of the Attorney General, including the Office of the Solicitor General.

4. I believe a 45-day extension of time will allow sufficient time to complete necessary deliberations and prepare a petition, if one is internally approved. A 45-day extension would result in a new deadline to file the petition of November 13, 2023. I am not aware of any prejudice to Plaintiffs-Appellants that would result from granting this extension. On September 18, 2023, I contacted Plaintiffs-Appellants' counsel regarding this Motion, explained I would be requesting an extension of 45 days, and I asked whether Plaintiffs-Appellants would oppose that request. Plaintiffs-Appellants' counsel informed me on September 19, 2023 that they do so object.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in Los Angeles, California, on September 20, 2023.

/s/ Kevin J. Kelly
Kevin J. Kelly